

**PROFESSIONAL SERVICES AGREEMENT
AMENDMENT #1**

BETWEEN LEWIS COUNTY AND BERRY DUNN MCNEIL & PARKER LLC.

PARTIES TO THE CONTRACT

This Contract is made and entered into by and between Lewis County hereinafter referred to collectively as the "COUNTY" and Berry Dunn McNeil & Parker LLC, hereinafter referred to as the "CONSULTANT." The COUNTY and the CONSULTANT together are hereinafter referred to as the "PARTIES."

Lewis County
351 NW North St
Chehalis WA 98532

Berry Dunn McNeil & Parker LLC
2211 Congress Street
Portland, ME 04102
207-541-2208

PURPOSE

The COUNTY hereby enters into a contract agreement with Berry Dunn McNeil & Parker LLC. to provide Grant Management Compliance and Consulting Services to include:

- Assessment of Current Grant Management Processes and Procedures
- Develop Standard Operating Procedures
- Preparation of Schedule of Expenditures of Federal Awards (SEFA)
- Assist in Grant Reviews
- Support ARPA Grant Management
- WSBO Broadband Contract and Grant Review

Further details of the services provided can be found in Exhibit A, Scope of Work, attached to this Agreement.

PERIOD OF PERFORMANCE

The term of this Agreement shall be from July 2022 and terminate December 31, 2024, but may be extended by mutual Agreement unless terminated or renewed as provided elsewhere in this Agreement.

STATEMENT OF WORK

The CONSULTANT agrees to provide to the COUNTY services and any material set forth in the project narrative identified as Exhibit "A" during the Contract period. CONSULTANT provides such services as an independent contractor using CONSULTANT'S own officers, agents, employees, or contractors. This Contract shall not be construed to make the COUNTY an employer or joint employer of CONSULTANT or any of CONSULTANT's officers, agents, employees, or contractors. The standard of care for CONSULTANT's services shall be the care and skill ordinarily used by members of CONSULTANT's profession practicing under the same or similar circumstances at the same time and in the same locality.

ESTIMATES

Any estimates of project cost, value or savings provided by CONSULTANT are intended to allow a comparative evaluation between alternatives and do not constitute a detailed evaluation or prediction of actual project costs, value or savings. Any such estimates are made on the basis of information available to CONSULTANT and on the basis of CONSULTANT's experience and qualifications, and represents its judgment as an experienced and qualified professional consulting firm. However, since CONSULTANT has no control over the impact of various factors that impact the actual project cost, value or savings, CONSULTANT does not guarantee that the actual project cost, value or savings will not vary from CONSULTANT's estimates.

FUNDING/COMPENSATION

Funding for this Contract is provided by Department of Treasury, through the American Rescue Plan Act. Total CONSULTANT compensation will be based on invoiced amount and will not exceed \$250,000 unless this Contract is subsequently amended by both parties.

BILLING PROCEDURES AND PAYMENT

The CONSULTANT shall provide the COUNTY with monthly invoices due 30 days after receipt describing and documenting to the COUNTY'S satisfaction the work performed. The CONSULTANT must provide a breakdown of expenses, identifying what was expended and when. Any fees for additional services will be discussed and approved by the COUNTY in advance of services being performed.

The COUNTY may, in its sole discretion, terminate the Contract or withhold payments claimed by the CONSULTANT for services rendered if the CONSULTANT fails to satisfactorily comply with any term or condition of this Contract and fails to cure such failure within a period of 10 days following written notice of thereof.

MODIFICATIONS

Either party may request changes in this Agreement. Any and all modifications agreed to by the parties shall be memorialized in a writing signed by each of the parties.

TERMINATION FOR DEFAULT

If the CONSULTANT defaults by failing to perform any of the obligations of this Agreement or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the COUNTY may, by depositing written notice to the CONSULTANT in the U.S. mail, postage prepaid, terminate the Agreement, and at the COUNTY's option, obtain performance of the work elsewhere. However, the COUNTY will not terminate for default without providing CONSULTANT written notice of the default and a period of 30 days to cure. If the Agreement is terminated for default, the CONSULTANT shall not be entitled to receive any further payments under the Agreement until work called for has been fully performed. Any extra cost or damage to the COUNTY resulting from such default(s) shall be deducted from any money due or coming due to the CONSULTANT. The CONSULTANT shall bear any extra expenses incurred by the COUNTY in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the COUNTY by reason of such default.

If a notice of termination for default has been issued and it is later determined for any reason that the CONSULTANT was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Public Convenience paragraph hereof.

TERMINATION FOR PUBLIC CONVENIENCE

The COUNTY may terminate the Agreement in whole or in part whenever the COUNTY determines, in its sole discretion that such termination is in the interests of the COUNTY. Whenever the Agreement is terminated in accordance with this paragraph, the CONSULTANT shall be entitled to payment for actual work delivered at unit contract prices for completed items of work. An equitable adjustment in the Agreement price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or non-completed work. Termination of this Agreement by the COUNTY at any time during the term, whether for default or convenience, shall not constitute a breach of contract by the COUNTY.

WITHHOLDING PAYMENT

In the event the CONSULTANT has failed to perform any substantial obligation required under this Contract the COUNTY shall notify the CONSULTANT in writing. If that failure has not been cured within thirty days after notification, then the COUNTY may, upon written notice, withhold all monies due and payable to CONSULTANT, without penalty, until such failure to perform is cured or otherwise adjudicated.

OWNERSHIP OF ITEMS PRODUCED

All writings, programs, data, public records or other materials prepared by the CONSULTANT and/or their subcontractors, in connection with the performance of this Agreement shall be the

sole and absolute property of the COUNTY. Any modification or reuse of such items for purposes other than those intended by this Agreement shall be at COUNTY's sole risk and without liability to CONSULTANT.

CONTRACT MANAGEMENT

The Contract Manager for each of the PARTIES shall be the contact person for all communications and billings regarding the performance of this Contract.

The COUNTY representative shall be Becky Butler, 351 NW North St., Chehalis, WA 98532; 360-740-1198, becky.butler@lewiscountywa.gov

The CONSULTANT representative shall be Bill Brown, 2211 Congress St., Portland, ME 04102, 207-541-2208 bbrown@berrydunn.com

INDUSTRIAL INSURANCE

With respect to the performance of this Contract, CONSULTANT shall comply with Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to its employees and agrees that COUNTY shall have no obligations under that Title to any of CONSULTANT's officers, agents, employees, or contractors.

INDEMNITY

CONSULTANT agrees to indemnify, defend and hold COUNTY and COUNTY'S officials, employees, agents, volunteers, and insurers harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) to the extent caused by any negligent or wrongful act or omission of CONSULTANT or CONSULTANT's officers, agents, employees, or contractors.

CONSULTANT's indemnification obligation shall not be limited in any way by the Washington State Industrial Insurance Act, RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and CONSULTANT hereby expressly waives any immunity afforded by such acts. The foregoing indemnification obligations were mutually negotiated by the parties as a material inducement to enter into this Contract.

COUNTY reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses or expenses and such participation shall not constitute a waiver of CONSULTANT's indemnity obligations herein.

The indemnity obligations herein shall survive this Contract's completion, expiration or termination.

SEVERABILITY

If any term or condition of this Agreement or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications, which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

ORDER OF PRECEDENCE

This Contract is entered into, pursuant to, and under the authority granted by applicable federal and state laws. The provisions of the Contract shall be construed to conform to those laws. In the event of an inconsistency in the terms of this Contract, or between its terms and any applicable statute, rule, or policy or procedure, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable federal laws and regulations,
- State law,
- Washington Administrative Code,
- This Contract, and
- Any other provision, term or material incorporated herein by reference or otherwise incorporated.

This Contract represents all the terms and conditions agreed upon by the PARTIES. No other statements or representations, written or oral, shall be deemed a part hereof.

CONFORMANCE AND CHOICE OF LAW

If any provision of this Contract violates any statute or rule of law of the State of Washington, it is considered modified to conform to that statute or rule of law. This Contract shall be construed under the laws of the State of Washington, except with respect to any choice of law rules. Venue for any action arising out of this Contract or its performance shall be in the Superior Court of Washington in and for Lewis County or in the U.S. District Court for the Western District of Washington, Tacoma Division.

APPROVAL

This Contract shall be subject to the written approval of the COUNTY authorized representative and shall not be binding until so approved. The Contract may be altered, amended, or waived only by a written amendment executed by both PARTIES.

PUBLIC RECORDS LAW AND RECORDS MAINTENANCE

The Consultant shall assist the County in timely and fully fulfilling all of County's obligations under the Washington Public Records Act and/or any other authority by timely and fully responding and providing documents and records in response to County's request for the same. In the event that Consultant fails to fully fulfill its obligations pursuant to this section and should a court impose a fine, penalty, sanction, and/or judgment against County for violation of said law, Consultant shall indemnify the County for the same, immediately pay County to satisfy the same together with all costs and attorneys fees incurred by County. The obligations created by this section shall survive the termination of this agreement.

The Consultant shall maintain all books, records, documents, data and other evidence relating to this contract and performance of the services described herein, including but not limited to, accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract. Consultant shall retain such records for a period of seven (7) years following the date of final payment.

If any litigation, claim or audit is started before the expiration of the seven- (7) year period, the records shall be retained for a period of seven (7) years after all litigation, claims, or audit findings involving the records have been finally resolved.

TIME IS OF THE ESSENCE

Time is of the essence for all terms, conditions, obligations, and duties set forth or referred to in this agreement.

ASSIGNMENT OR SUBCONTRACTING

No portion of this agreement may be assigned or subcontracted to any other individual, firm, or entity by Consultant without County's express and prior written approval. Notwithstanding any assignment or delegation by Consultant concerning this Agreement, whether with or without the County's consent, Consultant shall nevertheless remain primarily liable to County for all of its obligations hereunder notwithstanding any written provision to the contrary.

LEGAL COUNSEL

The parties hereto acknowledge, represent, warrant, and agree that they have read this agreement, fully understand the terms thereof, and have had the opportunity to seek independent legal counsel with respect thereto before signing. This agreement is executed by the parties without reliance upon any statement or representation by the persons or parties herein, or their attorneys or representatives, if any, other than those set forth in this agreement.

AUTHORITY

The parties each acknowledge, represent, and warrant that they have the full right, power, and authority to enter into this agreement. Each person signing this agreement on behalf of an entity represents and warrants that he or she has the full right, power, and authority to bind their respective entity, their respective entity has approved this Agreement and authorized them to sign it, and their respective entity is duly formed and in good standing.

INTERPRETATION OF THIS AGREEMENT

This agreement was negotiated and drafted jointly by the parties, and it shall not be construed against either party in case of any dispute.

This CONTRACT is executed by the persons signing below who warrant that they have the authority to execute the Contract.

LEWIS COUNTY

Becky Butler
Budget Administrator, County Administration

DATE

CONSULTANT



William Brown
Principal



DATE

"Exhibit A"

Lewis County Grant Management Services Statement of Work and Reporting Requirements

Background

Lewis County is the recipient of grant funding from State and Federal agencies and has identified the need to contract with a qualified firm with expertise in grant administration to provide application development, grant administration, grant management and reporting services for, but not limited to, the American Rescue Plan Act of 2021 regarding the State and Local Fiscal Recovery Funds direct allocation to the county and indirect grant awards through Washington State Department of Commerce and other State granting agencies. BerryDunn will also provide services for reviewing Lewis County grant procedures and policies related to all grant funds received.

Project meetings will either be held in a virtual setting using WebEx, Microsoft Teams or other similar method, or conducted in person.

The Contractor will provide services as directed by the County and such services will include, but not be limited to the following:

1. Assessment of Current Grant Management Processes and Procedures

The Contractor will conduct an assessment of the County's current grant management processes and procedures for federal funds, including the State and Local Fiscal Recovery Fund (SLFRF) under the American Rescue Plan Act (ARPA). Under this task the Contractor will review the County's prior audit findings and recommendations, and the County's current processes and procedures, including, but limited to the following:

- Identification of projects that are eligible to be funded under specific federal grants,
- Identification and collection of expenditure and performance measurement data
- Accounting for and Documentation of expenditure and performance measurement data
- Preparation of claims for reimbursement under the federal
- Risk assessment
- Subrecipient monitoring
- Closeout of grant

2. Develop Standard Operating Procedures

After completing its analysis of the County's grant management processes and procedures, the Contractor will develop a grant management procedures manual

3. Preparation of Schedule of Expenditures of Federal Awards (SEFA)

The Contractor will review the County's processes and procedures for completing the SEFA and make recommendations for ways to improve the process. In addition, the Contractor will assist the County in the preparation of its SEFA.

4. Assist in Grant Reviews

The Contractor will assist the County in grant reviews, including subrecipient monitoring, internal audit of programs and eligibility determinations.

5. Support ARPA Grant Management

The Contractor will assist the County in its management of the SLFRF funds by:

- Assessing eligibility of projects under SLFRF
- Identifying how project expenditures and performance measurements should be accounted for and reported in the U.S. Treasury's portal
- Reviewing prior Treasury reports for County expenditures
- Developing Reporting and Accountability program
 - o Internal Project Reports Templates
 - o External Project Reports and Templates
 - o Grant Agreements
 - o Subrecipient Monitoring
 - o Procurement – Assess whether RFP or RFQs are required, and if required, help develop RFPs and RFQs
- Performing other activities as necessary to help ensure compliance with US Treasury and other federal grant management and cost accounting requirements

6. ARPA Broadband Review

The Contractor will assist the County in the management of the Washington State's Broadband ARPA grant by:

- Reviewing contracts
- Developing reimbursement guidelines
- Reviewing reimbursements for compliance with grant guidelines
- Submitting requests for reimbursement to Washington State Department of Commerce
- Performing other activities as necessary to help ensure compliance with Washington State broadband program

County Responsibilities

- Participate in bimonthly project management coordination calls.
- Timely processing and payment of invoices.
- Review and process contract change requests and amendments, if needed.

Deliverables

- Monthly status reports and invoices, including project schedule and budget updates (emailed in PDF format).
- Project management coordination call summary notes (email)
- Develop a grant management procedures manual

Exhibit B:

Budget, Invoicing, and Contractor Payment

For performing the services specified in Exhibit A: Statement of Work and Reporting requirements the County agrees to pay an amount not to exceed \$250,000 for the period of July 1, 2022 – December 31, 2024, including any reimbursable expenses. The parties will mutually agree upon the not to exceed amounts for subsequent years based upon the County's budget and need for grant management services. Actual cost will be calculated based on actual hours worked using the hourly rates in the table below.

Title	01/01/23 – 12/31/23	01/01/24 – 12/31/24	01/01/25 – 12/31/25	01/01/26 – 12/31/26	01/01/27 – 12/31/27
Principal	\$470	\$490	\$510	\$530	\$550
Project Manager	\$350	\$370	\$385	\$400	\$415
Grant Management /Uniform Guidance Specialist	\$350	\$370	\$385	\$400	\$415
Senior Auditor	\$245	\$255	\$265	\$275	\$285
Senior Cost Analyst	\$245	\$255	\$265	\$265	\$265
Cost Analyst	\$190	\$200	\$210	\$220	\$230
Blended Hourly Rate	\$270	\$285	\$300	\$315	\$330